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In the Supreme Court of the United States

October Term, 1972

No. A-68 72-1263

WILLIAM WILK, *et al.* and HARVEY SMITH, *et al.*
Petitioners,

vs.

YELLOW FREIGHT SYSTEM, INC., *et al.*,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

October Term, 1972
No. A-684

WILLIAM WILK, *et al.* and HARVEY SMITH, *et al.*
Petitioners,

vs.

YELLOW FREIGHT SYSTEM, INC., *et al.*,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

JURISDICTION

The jurisdictional requirements are accurately and adequately presented to the Court in the Petition for Writ of Certiorari.

QUESTIONS PRESENTED

Respondent, Yellow Freight System, Inc., agrees with and adopts the statement of the Questions Presented as set forth in the Brief in Opposition for Respondents, Truck Drivers Local Union 407 and Joint Council 41.

STATUTES INVOLVED

The Petition accurately and adequately presents the relevant portions of the statute involved, to wit: 29 U.S. C.A. Section 185 (a).

STATEMENT OF THE CASE

Respondent, Yellow Freight System, Inc., agrees with and adopts the Statement of the Case as set forth in the Petition herein, as modified and supplemented in the Brief In Opposition for Respondents, Truck Drivers Local Union 407 and Joint Council 41.

LAW AND ARGUMENT

Before a party is entitled to review by writ of certiorari he must show compelling reasons for such review. Petitioners in the instant proceeding have presented nothing which is of such a compelling nature, which has prompted disagreement among the Circuit Courts, or which is of such a new and novel nature, as to be entitled to the relief sought before this Court.

Far from there being compelling reasons to grant the writ prayed for, there are overwhelming reasons *not* to grant the writ. Respondent specifically, and all major interstate trucking firms generally, have, in accordance with its statutory duty, bargained in good faith with the exclusive bargaining representative of its employees and has arrived at collective bargaining agreements which include provisions for the processing and final and binding settlement of *all* grievances arising under the terms of those Agreements. The disposition of grievances under this Teamster-type (Joint Employer-Union Committees) grievance procedure has been approved by this Court as within the framework contemplated by the "Steelworkers

Trilogy" [363 U.S. 564, 574, 593 (1960)]. *General Drivers, Warehousemen & Helpers Local 89, et al. v. Riss & Company, Inc.*, 372 U.S. 517 (1963).

This joint Employer-Union Committee type of grievance machinery is utilized throughout the trucking industry. It is the accepted method of dispute settlement by both employers and local unions alike. It has been approved by every reviewing court that has had occasion to examine its operation, e.g. *Price v. Teamsters*, 457 F.2d. 605 (3rd Cir., 1972). The duty of the employee representatives under such a grievance procedure is well established in the federal law. *Vaca v. Sipes*, 386 U.S. 571 (1968), *Humphrey v. Moore*, 375 U.S. 335 (1964). Briefly stated, there must be some showing that a union is guilty of hostile discrimination or arbitrary, capricious or discriminatory misconduct toward an employee or group of employees.

To urge as Petitioners do in the instant case that each dispute resolved under the applicable grievance procedure should be subject to review on the questions of the fairness and adequacy of the proceedings without the showing required by *Vaca v. Sipes, supra*, is to urge the destruction of the confidence of the parties to collective bargaining agreements in the trucking industry and the undermining of the consequent labor stability arrived at through years of bargaining. This result is the antithesis of the philosophy of the National Labor Relaitons Act of 1947, as amended, to foster the stability of labor-management relations.

In addition, and of most importance to an employer, imposition of the review standard urged by Petitioner would necessarily require an employer to delve into internal union matters before reaching an agreement with a union whenever the agreement could be detrimental to one or a group of employees represented by the union.

While an employer can and should be aware of deviations by a union from *Vaca v. Sipes* standards, the standards urged by Petitioner would substantially modify and enlarge the long established obligation of an employer in dealing with a duly recognized collective bargaining representative. Such a modification and enlargement should not be lightly undertaken and Petitioners have presented no cogent reasons why such action should be undertaken in this case.

Labor-management bargaining sessions and grievance disputes are not court room arguments or high school debates and the procedures evolved for these latter two arenas are not applicable or appropriate here. Since different circumstances exist, different proceedings and standards also must exist. Petitioners' interests are adequately protected by the standards of *Vaca v. Sipes* and *Humphrey v. Moore, supra.*

> "The complete satisfaction of all who are represented is hardly to be expected. A wide range or reasonableness must be allowed the statutory bargaining representative in serving the unit it represents subject always to complete good faith and honesty of purpose in the exercise of its discretion . . . Conflict between employees represented by the same union is a recurring fact." *Humphrey v. Moore, supra.*, p. 349.

If an employer and a union are not free to decide between conflicting interests of groups of employees through a recognized procedure with the assurance that their decision will be upheld in a court of law, collective bargaining will be set back many years and the stability of labor-management relations intended to be fostered by the Act will be irreparably retarded.

CONCLUSION

In view of the foregoing, therefore, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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